

1 Mark A. Bailey, Esq., WSBA #26337  
2 Beresford Booth PLLC  
3 145 Third Avenue South, Ste. 200  
4 Edmonds, WA 98020  
5 Phone (425) 776-4100  
6 Fax (425) 776-1700  
7 Attorney for Select Portfolio Servicing, Inc.

The Honorable Lonny R. Suko  
Hearing Date: Not Noted

8 **UNITED STATES DISTRICT COURT**  
9 **EASTERN DISTRICT OF WASHINGTON**

10 ANGELA UKPOMA,  
11 Plaintiff,  
12 vs.  
13 SELECT PORTFOLIO  
14 SERVICING, INC.,  
15 Defendant.

**NO. 2:10-cv-00420-LRS**

**DEFENDANT'S OPPOSITION  
TO PLAINTIFF'S "MOTION"  
CONTAINED IN HER NOTICE  
OF BANKRUPTCY FILING**

**Hearing Date and Time:**

**Not Noted in Moving Papers**

17  
18 The defendant, Select Portfolio Servicing, Inc. ("SPS"), through its  
19 attorneys of record, files this opposition to the Notice of Bankruptcy Filing,  
20 filed by the plaintiff, Angela Ukpoma, on January 4, 2011 (Ct. Dkt. No. 15).  
21 Though not fashioned as a motion or noted for hearing, the second page of the  
22 Notice of Bankruptcy Filing contains a "Prayer" requesting an order that "this  
23 case be stayed pursuant to 11 U.S.C. 362" and an order "absolving Plaintiff  
24 from responding to motions filed by defendant" (the "Motion"). To the extent  
25 the Court is inclined to consider the merits of these motions, they should be  
26 denied.

1 Procedurally, the Motion should be denied because it was filed without  
 2 any supporting affidavits, a memorandum of points and authorities, a proposed  
 3 order, or an accompanying Notice of Hearing, as required by Local Rule 7.1.

4 On the merits, the Motion should also be denied. It is true that Plaintiff  
 5 filed a Petition for relief under Chapter 7 a week after this lawsuit was filed.  
 6 Because Plaintiff's causes of action in this lawsuit then became property of her  
 7 bankruptcy estate, SPS filed its Motion to Dismiss because Plaintiff is not the  
 8 real party in interest. *See* Ct. Dkt. No. 7; *see also* 11 U.S.C. §541(a)(1) (the  
 9 filing of a petition in bankruptcy creates an estate that generally includes "all  
 10 legal or equitable interests of the debtor in property as of the commencement  
 11 of the case").

12 The Bankruptcy Code's automatic stay of 11 U.S.C. §362, however,  
 13 does not operate as a stay preventing a defendant from defending pre-petition  
 14 lawsuits filed by the bankrupt debtor. The filing of a bankruptcy petition  
 15 operates as a stay, applicable to all entities, of "the commencement or  
 16 continuation . . . of a judicial, administrative, or other action or proceeding  
 17 *against the debtor* that was or could have been commenced before the  
 18 commencement of the case under this title, or to recover a claim *against the*  
 19 *debtor* that arose before the commencement of the case under this title."  
 20 11 U.S.C. §362(a)(1) (emphasis added).

21 From the plain language of the statute, it is clear that the automatic stay  
 22 only applies to those civil actions *against* a debtor. *See In re Kozich*, 406 B.R.  
 23 949, 953 (Bankr. S.D. Fla. 2009); *see also Crosby v. Monroe County*, 394 F.3d  
 24 1328, 1331 n. 2 (11th Cir. 2004) (finding that the filing of bankruptcy did not  
 25 stay an action initiated by the debtor). "Thus, [when a plaintiff files for  
 26 bankruptcy,] the District Court can proceed with the lawsuit, because the

lawsuit is not stayed by the bankruptcy automatic stay.” *Mitchell v. Fukuoka Daiei Hawks Baseball Club (In re Mitchell)*, 206 B.R. 204, 212 (Bankr. C.D. Cal. 1997).

Here, Ukpoma is the named plaintiff. As such, this civil action is not against the named debtor in the bankruptcy action, and the automatic does not apply.

Nor does the bankruptcy stay prevent a defendant who is sued by the debtor from defending itself in the debtor’s lawsuit. *Mitchell*, 206 B.R. at 212. It is not a violation of the automatic stay to defend or seek dismissal of a pre-bankruptcy lawsuit filed by the Debtor. *See In re Way*, 229 B.R. 11 (B.A.P. 9<sup>th</sup> Cir. 1998); *White v. City of Santee (In re White)*, 186 B.R. 700 (B.A.P. 9<sup>th</sup> Cir. 1995).

The proper action is to dismiss the lawsuit, as argued in SPS’s pending Motion to Dismiss. Plaintiff should not be excused from responding to the Motion to Dismiss or any other motions SPS may file in this action. The Motion should be denied.

A proposed order is attached hereto as Exhibit 1.

DATED this 10<sup>th</sup> day of January, 2011.

s/ Mark A. Bailey

Mark A. Bailey, WSBA No. 26337

BERESFORD ♦ BOOTH PLLC

145 Third Ave. S, Suite 200

Edmonds, WA 98020

(425) 776-4100

Facsimile: (425) 776-1700

[markb@beresfordlaw.com](mailto:markb@beresfordlaw.com)

*Counsel for Defendant Select  
Portfolio Servicing, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on January 10, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System and mailed the foregoing to the following via U.S. Mail to the plaintiff and her Chapter 7 bankruptcy trustee at:

Angela Ukpoma  
P.O. Box 1075  
Kettle Falls, WA 99141  
*Pro Se*

Bruce R. Boyden, Chapter 7 Trustee  
Law Offices of Bruce R. Boyden  
621 West Mallon, Suite 607  
Spokane, WA 99201

DATED this 10<sup>th</sup> day of January, 2011.

s/ Mark A. Bailey  
Mark A. Bailey, WSBA No. 26337  
BERESFORD ♦ BOOTH PLLC  
145 Third Ave. S, Suite 200  
Edmonds, WA 98020  
(425) 776-4100  
Facsimile: (425) 776-1700  
[markb@beresfordlaw.com](mailto:markb@beresfordlaw.com)  
*Counsel for Defendants Select  
Portfolio Servicing, Inc.*

# EXHIBIT 1

1 Mark A. Bailey, Esq., WSBA #26337  
2 Beresford Booth PLLC  
3 145 Third Avenue South, Ste. 200  
4 Edmonds, WA 98020  
5 Phone (425) 776-4100  
6 Fax (425) 776-1700  
7 Attorney for Select Portfolio Servicing, Inc.

The Honorable Lonny R. Suko

8 **UNITED STATES DISTRICT COURT**  
9 **EASTERN DISTRICT OF WASHINGTON**

10 ANGELA UKPOMA,  
11 Plaintiff,  
12 vs.  
13 SELECT PORTFOLIO  
14 SERVICING, INC.,  
15 Defendant.

**NO. 2:10-cv-00420-LRS**

**[PROPOSED]**

**ORDER DENYING  
PLAINTIFF'S "MOTION"  
CONTAINED IN HER  
NOTICE OF BANKRUPTCY  
FILING**

16  
17 This matter came before the Court as a result of the Notice of  
18 Bankruptcy Filing, filed by the plaintiff, Angela Ukpoma, on January 4, 2011  
19 (Ct. Dkt. No. 15). The second page of the Notice of Bankruptcy Filing  
20 contains a "Prayer" requesting an order that "this case be stayed pursuant to  
21 11 U.S.C. 362" and an order "absolving Plaintiff from responding to motions  
22 filed by defendant" (the "Motion"). The defendant, Select Portfolio Servicing,  
23 Inc. ("SPS"), through its attorneys of record, timely filed its opposition to the  
24 Motion. Based upon the Motion, and upon consideration of the pleadings,  
25 papers and authorities presented in support and opposition to the Motion, the  
26

1 Court finds that the relief sought by the Plaintiff is unwarranted. NOW,  
2 THEREFORE, IT IS HEREBY

3 **ORDERED** that the Motion is **DENIED**; and it is further  
4 **ORDERED** that this case is not stayed; and it is further  
5 **ORDERED** that Plaintiff is not absolved from responding to motions  
6 filed by the defendant SPS.

7 DATED this \_\_\_\_\_ day of February, 2011.

8  
9  
10 

---

CHIEF JUDGE LONNY R. SUKO

11 Presented by:

12  
13 s/ Mark Bailey  
14 Mark Bailey, WSBA #26337  
15 Attorneys for the Defendant  
16 Beresford Booth PLLC  
17 145 Third Avenue South, Ste. 200  
18 Edmonds, WA 98020  
19 Phone (425) 776-4100  
20 Fax (425) 776-1700  
21 Email: markb@beresfordlaw.com  
22  
23  
24  
25  
26